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Nos. 18,594 & 19,101

Supreme Court, U.S.
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In The

SUPREME COURT OF THE UNITED STATES

October Term 1969

WILLIAM CLYDE DEMING,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR REHEARING

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INTERVENING CIRCUMSTANCES OF SUBSTANTIAL AND CONTROLLING EFFECT, AND OTHER SUBSTANTIAL GROUNDS AVAILABLE TO PETITIONER ALTHOUGH NOT PREVIOUSLY PRESENTED.

On May 3, 1971 this Court, in Case Number 68, *Deming* v. *United States,* denied review of a Petition for Certiorari, Justice Douglas dissenting. On May 3, 1971, this Court, in Case Number 67, *Di Piazza* v. *United States,* likewise denied review of that case. That case concerned Sam (Salvatore) Di Piazza, indicted and tried with the Petitioner Deming as co-defendant, in the within Case Number 18,594.

On May 19, 1971, the case of Sam (Salvatore) Di Piazza terminated in the United States District Court for the Southern District of Ohio, in Cincinnati, Ohio when Di Piazza was surrendered and committed. Thus, for the first time since these cases began, the Petitioner herein,

William Clyde Deming, of Kentucky, stands free of the shadow of his co-defendant, Sam (Salvatore) Di Piazza of New Orleans, Louisiana.

Up to now arguments on behalf of Petitioner Deming have been polarized around a center which was careful not to incriminate co-defendant Di Piazza. The arguments were, nevertheless, honest, because they challenged the Search Warrant used to seize the evidence, a Search Warrant who's supporting affidavit specifically stated that the originating source of information was a call from Las Vegas in February to Deming's number. Therefore, the Petitioner built his case on the deficiency of that Search Warrant and its supporting affidavit. It was so successful in fact that the government in its brief to *this* court, changed its story and its tactic by shifting its point of origin from the Las Vegas calls in February to later Lexington calls in June. These Lexington calls to Deming were originally labeled "corroboration calls" in government argument in both lower courts. But before this court they suddenly reversed roles with the Las Vegas call, and themselves became the originating calls, while the Las Vegas call was reduced in status to an "added to that" position. *Brief* for the *United States* in oposition; paragraph 2, page 6.

But there has been, in fact and in law, an originating point in these cases the predated Las Vegas even as Las Vegas predated Lexington, and as January predates both February and June, and it makes shambles of the government's pretention as to its February search warrant and the requirement of probable cause. That point was and is in Louisiana, when, in January, the FBI raided the apartment of Sam (Salvatore) Di Piazza in New Orleans and *there* obtained the phone number of Petitioner Deming, and all things else flowed from this: (1) The search of the phone records (2) The alleged tip from Las Vegas

which was purported to have produced Deming's Number and did in fact produce the faulty warrant in which the undisclosed informant was not supported by any averment as to credibility or reliability (3) The cover-up "corroboration" calls from Lexington 6 months after, which by government legerdemain became, before this court, originating calls.

Our arguments up to now have not been marshalled in the fashion we now propose because in our defense of Deming we were hesitant to lay a track to the door of a co-defendant. But Judge Anthony Celebrezze of the Sixth Circuit Court of Appeals was not hesitant to do so. In his opinions, from which we now quote, Judge Celebrezze, in a strong dissent in our favor, makes the precise point which we now present to this Court as our argument herein and as our justification for respectfully petitioning a rehearing in the case of William Clyde Deming.

> CELEBREZZE, Circuit Judge, dissenting. I respectfully dissent. . . . Without the toll records, the Government could not establish that a bookmaking network existed between Deming's telephones, Di Piazza's New Orleans telephone, and the two telephones in Lexington, Kentucky. Stripped of this information, the only evidence the Government had when it went before the Commissioners was an unsupported tip from Las Vegas, Nevada, and visual surveillance which disclosed nothing more than the fact that Deming was seen near the Woodford Road apartment. The U.S. Supreme Court held in *Spinelli* that such circumstances do not establish probable cause. . . .
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> * * *
>
> The majority opinion states that "[t]he F.B.I. raided DiPiazza's hotel room in New Orleans on January 8, 1966, which was well within the period charged in the indictment." It is important to note that the F.B.I. raided DiPiazza's hotel room *one month before*

> *the Government received its alleged Las Vegas information* concerning Deming's Woodford Road telephone number. It is also important to note that the Government admitted during the hearing on the motion to suppress that electronic surveillance had been conducted against DiPiazza by both the F.B.I., which arrested DiPiazza, and the I.R.S., which arrested Deming, his co-conspirator. (Emphasis added.)
>
> Upon the arrest of DiPiazza on January 8, 1966, the F.B.I. obtained from his person papers containing Deming's Woodford Road telephone number. *Although the I.R.S. informed the Commissioners that it summoned Deming's telephone toll records* (Woodford Road) *in February of 1966, supposedly at the request of its Las Vegas office, evidence developed that these toll records were summoned in January of 1966.* The chronology of events in these cases emerges as follows: The F.B.I. and the I.R.S. electronically monitored DiPiazza's conversations; F.B.I. agents raided DiPiazza's hotel room in January of 1966 and seized Deming's Cincinnati, Ohio telephone number; I.R.S. agents summoned the toll records for that number in the same month, procured search warrants on the basis of the information contained in them, and seized the evidence that led to Appellants' convictions for violating wagering statutes and for conspiring to do so. (Emphasis added.)

As late as March 29, 1971, 15 months after this Petitioner presented his original Petition for Certiorari, this Court reaffirmed all of its prior underlying decisions in the matter of Initiating Information and Subsequent Corroboration in the case *Whitely* v. *Warden of Wyoming Penitentiary*, #136, March 29, 1971. The present case merits review in light of that reaffirmance; otherwise the refusal of this Court to rehear this case amounts to a refusal to apply its own principles.

CONCLUSION

For the foregoing reasons the Petitioner requests that a rehearing be granted.

Respectfully submitted,

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CERTIFICATE OF COUNSEL

William J. Dammarell and B. H. Berg, counsel for the Petitioner herein, hereby certify that the within Petition for Rehearing is presented in good faith and not for delay and that the Petition is restricted to the grounds above specified.

. . . . . .

WILLIAM J. DAMMARELL

. . . . . .

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